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April 12, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A-325
Washington, D.C. 20554

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Re: Comments of Cablevision Lightpath, Inc., CC Docket No. 99-68

Dear Ms. Salas:

Attached are four copies of the comments on behalf of Cablevision Lightpath, Inc. filed electronically in the above-referenced docket on April 12, 1999.

If you have any questions concerning this filing please contact the undersigned. Thank you for your assistance.

Respectfully submitted,

Gil M. Strobel

Enclosure

cc: Chérie R. Kiser
Attached Service List

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic	)	

COMMENTS OF CABLEVISION LIGHTPATH, INC.

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April 12, 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic	)	

COMMENTS OF CABLEVISION LIGHTPATH, INC.

Cablevision Lightpath, Inc. ("Lightpath"), by its attorneys, hereby submits these comments in response to the Federal Communications Commission's ("FCC's") Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. Lightpath is a full service, facilities-based competitive local exchange carrier ("CLEC") and is committed to offering low-priced, high-quality telecommunications services to a wide variety of business and residential customers, including Internet service providers ("ISPs"). As the FCC has recognized, Lightpath and other local exchange carriers ("LECs") incur significant costs when delivering traffic to their ISP customers, just as they incur costs when delivering traffic to traditional local service customers.[1/] Accordingly, Lightpath has a vested interest in the outcome of this proceeding and in ensuring that it continues to be fully compensated for its costs when terminating traffic which originates on another carrier's network.

1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, FCC 99-38 at 19, ¶ 29 (rel. Feb. 26, 1999) ("Declaratory Ruling" and "NPRM").

CLECs such as Lightpath have developed business plans and made substantial investments in infrastructure and residential telephony services based on the carefully crafted reciprocal compensation scheme that exists today. As Lightpath recently explained in a proceeding before the New York Public Service Commission ("NYPSC") on related issues,[2] the current scheme is the product of lengthy federal and state proceedings during which regulators thoroughly investigated the underlying economic and policy issues. The existing reciprocal compensation framework was devised with the input of numerous parties and remains as sound today as it was when it was first implemented.

The FCC should not pull the rug out from new entrants by removing ISP-bound traffic from this well-considered scheme just as competition is taking hold in the local market. Removing ISP-bound calls would not only undermine CLEC expectations and threaten investment, but would lead to the piecemeal dismantling of the comprehensive reciprocal compensation framework currently in place. Separating out ISP-bound calls for disparate treatment would also burden state commissions by requiring them to re-institute proceedings and derive new reciprocal compensation rates based on the costs and characteristics of the remaining traffic. Finally, creating a separate inter-carrier compensation regime for ISP-bound traffic would be inconsistent with existing FCC precedents treating this traffic as local, would

[2] New York Public Service Commission Cases 98-C-1273, 98-C-1479 ACC National Telecom Corp. Blocking Obligations for Chatline Services and Complaint of Origin Communications, Inc. Against Frontier Telephone of Rochester, Inc. Concerning Alleged Blocking of Free Chatlines, Comments of Cablevision Lightpath, Inc. at 4-5 (Mar. 22, 1999) and Reply Comments of Cablevision Lightpath, Inc. at 3 (Mar. 29, 1999), attached hereto as Attachments A and B, respectively ("Lightpath's Chatline Comments" and "Lightpath's Chatline Reply Comments").

encourage incumbent local exchange carriers ("ILECs") to "game" the regulatory system, and would unfairly rob CLECs of hard-fought gains they have won in the marketplace.

At bottom, this proceeding represents nothing more than an attempt by the ILECs to seek regulatory relief in the face of competition. Competitive carriers have succeeded in identifying and capturing a segment of the market that the ILECs originally believed they could win for themselves. Rather than compete for these customers in the marketplace, the ILECs have chosen to seek regulatory relief from the FCC and various state commissions. These attempts should not be rewarded – the ILECs should not be allowed to win in the regulatory forum what they could not win in the marketplace. This is especially true given that the ILECs continue to favor applying reciprocal compensation to CMRS[3/] calls, where the traffic and payment imbalance weighs strongly in their favor.

Lightpath respectfully requests the FCC to keep the current comprehensive reciprocal compensation framework in place and to ensure that any adjustments that are justified:

- apply to all traffic that is not subject to access charges; and
- will not disrupt existing interconnection agreements.

I. CARRIERS MUST CONTINUE TO HONOR THEIR CONTRACTUAL OBLIGATIONS UNDER EXISTING INTERCONNECTION AGREEMENTS

Carriers must continue to honor their contractual reciprocal compensation obligations. CLECs have entered into interconnection agreements with ILECs, and the terms of those

[3/] Commercial Mobile Radio Service ("CMRS") includes most traditional wireless traffic, including personal communications services ("PCS"), cellular and satellite telephone service, among others. See Interconnection Between Local Exchange and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5022 (rel. January 11, 1996) ("CMRS NPRM").

agreements have significantly informed the business strategies of CLECs, including their infrastructure investment plans. Carriers prioritize the issues being negotiated, and make concessions and demands based on a cost-benefit analysis. Given the volatility involved in entering a new market, CLECs such as Lightpath put a high priority on obtaining the certainty associated with a contractual agreement setting out the terms and conditions of interconnection. A key aspect of such interconnection agreements is negotiating a reciprocal compensation rate that ensures that each carrier is compensated for the costs it incurs in terminating calls, including calls terminated to ISP customers. These contractual arrangements between carriers must remain in effect until the expiration of such agreements. Otherwise, the FCC risks destabilizing CLEC business plans.

Radical changes to the terms of existing agreements would seriously jeopardize CLECs' ability to make the infrastructure investments necessary to roll out competitive services on a broad scale. This is especially true of CLECs such as Lightpath that are poised to expand their roll out of facilities-based residential telephony. The FCC has already clearly indicated its intention that interconnection agreements not be disrupted by its Declaratory Ruling. However, a strong confirmation of this intention is necessary given the recent actions of some ILECs.[4/] The

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4/ The FCC's Declaratory Ruling has led ILECs such as Bell Atlantic to file a series of petitions in several states seeking to change existing reciprocal compensation arrangements, and trying to shirk their obligations under existing agreements. In New York, for example, Bell Atlantic filed a petition asking the NYPSC to overturn its existing ISP Order, New York Public Service Commission Case 97-C-1275, Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Order Closing Proceeding (Mar. 19, 1998) ("New York ISP Order"), and allow Bell Atlantic to cease making reciprocal compensation payments to CLECs for ISP-bound calls. New York Public Service Commission Case 97-C-1275, Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Petition of Bell Atlantic - New York to Re-Open Case 97-C-1275 (Mar. 2, 1999) ("BA-NY's ISP Petition"). Bell Atlantic even asked the NYPSC to allow it to immediately escrow its reciprocal compensation payments pending the NYPSC's ruling on Bell

FCC should make clear that any rule it adopts pursuant to this NPRM also will not disrupt existing agreements.

II. A SOUND INTER-CARRIER COMPENSATION SCHEME MUST APPLY TO ALL TRAFFIC WITH LOCAL CHARACTERISTICS THAT IS NOT SUBJECT TO ACCESS CHARGES

The FCC's conclusion that ISP-bound traffic is interstate in nature does not require the Commission to exclude such traffic from reciprocal compensation arrangements. As the FCC itself has recognized, ISP traffic has the same characteristics as jurisdictionally local traffic. Given the similarities between ISP-bound traffic and other local traffic, network economics and regulatory policy demand that it be treated as part of the same generally applicable reciprocal compensation framework that governs jurisdictionally local traffic. This framework is as sound today as it was when the incumbent LECs first advocated for it, and when the FCC and many states adopted it.[5/] Thus, any adjustments to inter-carrier compensation must be justified under the existing framework, through a comprehensive review, and must apply to all traffic.[6/] Singling

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Atlantic's petition. Id. Bell Atlantic's petition is clearly inconsistent with the FCC's intent and would leave CLECs without any compensation for the legitimate network costs they incur in terminating calls to their ISP customers.

5/ See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, 16022-16023 (1996) ("Local Competition Order"), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (9th Cir. 1997) (CompTel), aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997) Iowa Utils. Bd.), aff'd in part and vacated in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd. 119 S. Ct. 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996); Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997); further recon. pending.

6/ Lightpath's concerns focus on the substantive issue of ensuring that symmetrical cost-based inter-carrier compensation continues to apply uniformly to all traffic that is not subject to access charges. Lightpath takes no position on the procedural aspect of how these substantive decisions out ISP-bound traffic for disparate treatment would be unjustified and would open the door to endless regulatory gaming. Moreover, a precedent already exists for treating jurisdictionally interstate calls as local for reciprocal compensation purposes – the FCC has allowed CMRS traffic to be subject to reciprocal compensation despite the fact that such traffic is subject to federal, rather than state jurisdiction.

A. ISP-bound Calls Have the Same Characteristics as Traditionally Local Calls and Should Be Treated the Same for Purposes of Inter-carrier Compensation

In the same Declaratory Ruling[7/] in which the Commission concluded that ISP calls are jurisdictionally interstate, the FCC also recognized its "long-standing policy of treating this traffic as local," reiterating the many ways ISPs and ISP traffic are treated as local for other, closely related regulatory purposes.[8/] ISPs and calls to ISPs have all the salient characteristics of local users and local calls: 1) they use local telephone numbers; 2) they are not subject to access charges; 3) they are billed at local rates; and 4) they are treated as local for ARMIS and separations purposes.[9/] In addition, ISPs are allowed to purchase their links to the public

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should be implemented. The FCC could maintain the status quo, leaving it to the states to decide issues of reciprocal compensation, subject only to the requirement that the states treat ISP-bound traffic the same as jurisdictionally local traffic for reciprocal compensation purposes, or it could work jointly with the states to devise a new overall compensation scheme.

7/ Declaratory Ruling at ¶ 1.

8/ Id. at ¶ 24.

9/ Declaratory Ruling at ¶ 4; Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2635 n.8, 2637 n.53 (1988) ("ESP Exemption Order") (stating that ESPs generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, switched telephone network through *intrastate* business tariffs, they pay local business rates and interstate subscriber line charges for their switched access connections to LEC central offices and they pay the special access surcharge when purchasing special access lines under the same conditions as those applicable to end users.[10/] An ISP also receives service like any local end-user "typically purchas[ing] [local] business lines from a LEC, for which it pays a flat monthly fee."[11/] By allowing ISPs to purchase service in the same manner as other local customers, the FCC has consistently "discharged its interstate regulatory obligations by treating ISP-bound traffic *as though it were local.*"[12/]

Similarly, state commissions have also recognized the local characteristics of ISP-bound traffic. For example, the NYPSC has found that "a call to an ISP is no different from a call to any other large volume customer, such as a local bank or a radio call-in program."[13/] All of these calls "are billed at local rates and are treated as local calls for ARMIS Reporting and Separations."[14/] In addition, the NYPSC found that calls to ISPs are no more costly than other

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Notice of Proposed Rulemaking, 4 FCC Rcd 3983, 3987-3988 (1989).

10/ Declaratory Ruling at ¶ 5.

11/ Id. at ¶ 4.

12/ Id. at ¶ 5 (emphasis added).

13/ New York ISP Order at 3 (concluding that calls to ISPs should not be treated any differently from local calls placed to other end-users). See also, id. at 6 (stating that "there is nothing unique about internet traffic...that would warrant a different compensation structure for this type of call").

14/ New York ISP Order at 3; accord Declaratory Ruling at ¶ 5 (discussing the many ways that the Commission treats ISP-bound traffic as though it were local).

local calls.[15] Thus, both the FCC and state commissions have concluded that ISP-bound traffic should properly be treated as local for regulatory purposes and the policies underlying these decisions continue to hold true, regardless of how the traffic is designated for jurisdictional purposes. The existing, generally applicable reciprocal compensation scheme should therefore continue to apply to ISP-bound calls. Indeed, any other treatment might give rise to a legal claim that the agency is acting inconsistently and therefore contrary to norms of reasoned decision-making.

The notion that all traffic with local characteristics should be treated as part of the same comprehensive scheme is also embedded in the TELRIC methodology used by the FCC and state commissions to set reciprocal compensation rates. TELRIC requires that costs be determined based on the total level of output provided over the network element or service in question.[16] TELRIC studies are based on "the entire quantity of the network element provided."[17] As the FCC explained, under TELRIC:

> [t]he forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, . . . divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.[18]

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[15] New York ISP Order at 5.

[16] Even the name "TELRIC" refers to Total Element Long-Run Incremental Costs, emphasizing that it is inappropriate under the TELRIC methodology to consider anything less than total output.

[17] Local Competition Order, 11 FCC Rcd at 15850.

[18] See id. at Appendix B - Final Rules (emphasis added).

Thus, TELRIC rates are based on the total level of output. By definition, then, the cost studies underlying current reciprocal compensation rates were based on the average cost of *all* calls, including those to ISPs.[19]

In fact, one of the advantages of TELRIC is that it prevents parties from using sample outputs that are not representative of the total and manipulating the data to their own advantage. Removing specific types of calls from the reciprocal compensation mix would therefore undermine the TELRIC methodology and require state commissions to calculate a new rate based solely on the traffic to be included under the new scheme. This time consuming process is totally unnecessary. There is no evidence to support a deviation from the status quo of continuing to apply uniform reciprocal compensation rates to *all* calls, as was originally intended.

Furthermore, as Lightpath explained in its attached comments, the all-encompassing nature of TELRIC is only one of several critical components that went into the creation of the existing reciprocal compensation scheme.[20] For example, the existing scheme has the additional benefit of being symmetrical in nature. As the FCC explained in its Local Competition Order, "a symmetric compensation rate gives [a CLEC] correct incentives to minimize its own costs of

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[19] See, e.g., New York Public Service Commission Cases 94-C-0095, 95-C-0657, and 91-C-1174, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, et al., Supplemental Testimony of C.R. Curbello, at 25-26 (October 9, 1996) (explaining that the usage components for switching related elements were derived by dividing total investments by "the total busy hour minutes of use served by the switch" to arrive at a per-minute-of-use ("MOU") investment) (emphasis added); Id. at 30 (explaining that a similar procedure was used to determine tandem switching costs); Id. at 35 (explaining that usage was determined by "analyzing all recorded traffic" for a one month period) (emphasis added).

[20] See Attachment 1 at 7-9; Attachment 2 at 5-7.

termination . . . ."[21] In addition, symmetrical rates are administratively easier for regulators to derive and manage than asymmetrical rates based on each carrier's costs.[22]

B. The FCC's Treatment Of CMRS Traffic Serves As Precedent For Treating Jurisdictionally Federal Traffic As Local For Policy Reasons

The FCC has already allowed other traffic over which it exercises jurisdiction to be subject to state reciprocal compensation rules. At the urging of the ILECs, the FCC ruled that reciprocal compensation should apply to the termination of LEC-CMRS traffic[23] despite the fact that the FCC treats such traffic as federal for jurisdictional purposes.[24] The FCC's decision regarding CMRS traffic not only points out the fact that jurisdiction is not dispositive of how

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21/ Local Competition Order, 11 FCC Rcd at 16040-41.

22/ Id. at 16041. Symmetrical rates also encourage competitive entry by allowing potential CLECs to enter the local market without submitting cost studies. Allowing CLECs to rely on ILEC cost studies is consistent with the FCC's conclusion that "cost information serves no useful purpose" for non-dominant carriers, which lack market power and are therefore "incapable of burdening customers with the costs of underutilizing facilities." See, e.g., US Sprint Communications Company Limited Partnership, Application for Authority to Operate Facilities in the Private Transatlantic Telecommunications Cable System for the Provision of Authorized Common Carrier Services to the United Kingdom, the Republic of Ireland and Bermuda and Points Beyond, Memorandum, Opinion, Order and Authorization, 4 FCC Rcd 6279, 6283-84 (released August 14, 1989). Requiring CLECs to provide cost studies before they can offer service would create a formidable barrier to entry, given the expense such a cost study would likely entail. See Local Competition Order at 16041-42. Unlike ILECs, CLECs do not yet have a broad customer base over which to defray the onerous expense of a cost study. See id. An asymmetrical compensation scheme based on the costs of the individual carriers involved would also be difficult to administer and would likely lead to anti-competitive results.

23/ See id. at 15517; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Bell Atlantic Comments, at 6, 8 (March 4, 1996) ("BA CMRS Comments").

24/ Telecommunications Act at Section 332; see Local Competition Order, 11 FCC Rcd at 15517; CMRS NPRM, 11 FCC Rcd 5020, 5064-5066 (1996). Although some parties may dispute the jurisdictional nature of CMRS traffic, it is clear that the FCC considers such traffic to be subject to federal jurisdiction.

traffic should be treated for reciprocal compensation purposes, but also demonstrates the risk of separating out particular types of traffic or users for disparate treatment.

In the CMRS context, the bulk of the minutes are terminated by the ILECs, enabling them to impose considerably more costs on CMRS providers than CMRS providers impose on them.[25] Recognizing this imbalance in their favor, the ILECs successfully argued that reciprocal compensation should apply to such traffic rather than bill and keep, or some other, alternative compensation method.[26] CLECs, on the other hand, have succeeded in attracting the bulk of inbound minutes terminating with ISPs. They should receive compensation for terminating this traffic in the same manner as ILECs receive compensation for terminating CMRS traffic. Allowing reciprocal compensation to apply to jurisdictionally federal CMRS traffic but not to ISP-bound traffic would create a regulatory imbalance favoring ILECs over CLECs – allowing ILECs to reap the rewards of the CMRS traffic they terminate, but not allowing CLECs to enjoy similar benefits from calls to their ISP customers whom CLECs have won in the marketplace. This type of regulatory imbalance would impermissibly discriminate against new entrants in favor of the incumbent monopolists.

[25] See Local Competition Order 11 FCC Rcd at 16053; BA CMRS Comments, Attached Statement of Robert W. Crandall on Interconnection Policies of CMRS at 8 ("Current termination rates for cellular traffic generate a substantial amount of revenue for the LECs"); id. at 9 (noting that CMRS traffic is "heavily weighted with calls from the wireless subscribers to LEC subscribers"); Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, SBC Comments, at 11-12 (March 4, 1996) (noting that approximately 80 percent of LEC-CMRS traffic would be terminated by the ILEC).

[26] Ironically, the ILECs' argument at the time was that applying bill and keep to CMRS traffic would create perverse incentives, encouraging carriers to generate large volumes of *outbound* minutes and "avoid customers that have a disproportionate share of in-bound calls." BA CMRS Comments at 7-8. According to Bell Atlantic, reciprocal compensation was therefore necessary to encourage LECs to seek customers with inbound minutes. BA CMRS Comments at 7.

CONCLUSION

For all of the reasons stated above, the FCC should find that the existing, generally applicable, reciprocal compensation scheme and rates continue to apply to ISP-bound traffic. Continuing the current policy of applying reciprocal compensation to ISP-bound traffic would ensure regulatory stability as well as continue the FCC's long-standing policy of treating ISP-bound traffic as local. Conversely, separating out ISP-bound traffic for unique treatment would lead to a piecemeal dismantling of the carefully crafted scheme currently in place and unfairly deprive CLECs of gains they have won in the marketplace.

Respectfully submitted,

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Dated: April 12, 1999

ATTACHMENT 1

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of ACC National Telecom Corp.	**)**	**Case 98-C-1273**
Blocking Obligations for Chatline Services	**)**	
	)	
Complaint of Origin Communications, Inc.	**)**	**Case 98-C-1479**
Against Frontier Telephone of Rochester, Inc.	**)**	
Concerning Alleged Blocking of Free Chatlines	**)**	

COMMENTS OF CABLEVISION LIGHTPATH INC.

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Complaint of Origin Communications, Inc. **Against Frontier Telephone of Rochester, Inc.** **Concerning Alleged Blocking of Free Chatlines**	**)** **)** **)**	**Case 98-C-1479**

COMMENTS OF CABLEVISION LIGHTPATH, INC.

Cablevision Lightpath, Inc. ("Lightpath"), by its attorneys, hereby files these comments in the above-referenced proceeding in response to the New York Public Service Commission's ("PSC's") Chatline Order.[27/] As part of the PSC's forward looking pro-competitive policies, it developed a comprehensive framework for local competition, a key component of which is a carefully considered, sound regime for compensating carriers for terminating calls. Now, Bell Atlantic-New York ("BA-NY") is using the regulatory process in every which way it can to address its situation with respect to calls terminating to Internet service providers ("ISPs"). In so

[27/] Cases 98-C-1273 and 98-C-1479, Order Directing Carriers to File Tariffs for Chatline Services and Related Actions (issued and effective February 4, 1999) ("Chatline Order") (inviting interested local exchange carriers to file cost or rate design information, if any, which tends to support a different compensation scheme for the termination of large call volumes to a single customer).

In addition, Lightpath has received a copy of Bell Atlantic - New York's ("BA-NY's") early-filed comments in this proceeding. Lightpath did not receive these comments in time to fully respond to them here, but its preliminary reading indicates that BA-NY is relying on weak, unsubstantiated arguments in an attempt to upset the carefully crafted regulatory scheme the PSC developed to govern reciprocal compensation. Lightpath will file its formal response to BA-NY's March 15 filing in accordance with the procedural schedule issued by the PSC. Case 97-C-1275, Notice Requesting Comments on Reciprocal Compensation Proposals (Issued March 18, 1999) (comments on BA-NY's March 15 filing are due March 29) ("Notice Requesting Comments").

doing, BA-NY never addresses the most obvious question in response: Why doesn't it simply compete for these customers as CLECs have successfully done? Any decision to alter the PSC's reciprocal compensation scheme to carve out exceptions for particular types of calls would represent a stunning departure from the PSC's carefully considered reciprocal compensation regime. At a minimum, the PSC would have to undertake a comprehensive review, including examination of all ILEC and CLEC traffic patterns, appropriate cost studies, hearings, and full economic analyses before taking any action on rates, even on an interim basis.

Moreover, relying on the business environment reflected in New York's established rate-setting policy, companies such as Lightpath have invested millions of dollars in New York to offer competitive, high quality telephone service. Competition cannot thrive in any market, however, if competitive companies cannot rely upon a stable regulatory environment. Upsetting the sound economically-based current framework, which was developed with the input of many parties and the complete support of BA-NY, would create uncertainty, thwart existing business arrangements, and severely undermine competition in New York.

Recognizing the importance of regulatory stability, the PSC has acted to minimize the immense potential for disruption the proposed regulatory changes could cause by explicitly stating that "existing interconnection agreements will be unaffected" by this proceeding.[28/] Lightpath urges the PSC to resist *any* attempts to change existing reciprocal compensation arrangements or recalculate the applicable rates, even on an interim basis, where as here, such changes have in no way been justified. Lightpath would be pleased to participate in a measured, considered process regarding the overall reciprocal compensation scheme, but will vigorously

[28/] Chatline Order at 11.

resist any attempt to make discrete, special protective rules relating to one type of customer to assist a specific carrier who was unable to adapt to competitive market conditions.

INTRODUCTION AND SUMMARY

Lightpath is a full service, facilities-based competitive local exchange carrier ("CLEC") and is committed to offering a broad range of services to a wide variety of business and residential customers in New York. Using state-of-the art 5ESS switches, Lightpath is able to offer all forms of switched voice and data services, including basic telephone services. Cablevision Systems Corp. ("Cablevision") along with its affiliates, including Lightpath, is spending hundreds of millions of dollars to upgrade its network in New York and expand its deployment of two-way interactive digital services. Cablevision and Lightpath are also spending tens of millions additional dollars on switching and other costs to provide telephone services over this upgraded network.

Contrary to the common portrayal of CLECs as targeting only commercial customers, Lightpath serves both commercial and residential customers using primarily its own facilities. In fact, Lightpath has more residential customers than business customers, many of them located in the less densely populated suburban areas where competition tends to lag. Furthermore, Lightpath offers its residential customers services at rates significantly lower than Bell Atlantic[29/] -- and Lightpath manages to provide these customers with the highest level of service, as evidenced by the recent commendation it received from the PSC.[30/] Given Lightpath's

[29/] This is particularly noteworthy given that Bell Atlantic often claims that it serves these customers at rates that are below its costs.

[30/] Commission Issues Commendation to Telephone Companies for Excellent Service, Public Service Commission Release, at 1 (March 16, 1999).

competitive rates and excellent service record, it is no surprise that it attracts a wide variety of residential and business customers, including ISPs. These ISPs make up a very small percentage of the thousands of customers Lightpath serves.[31] They do, however, often receive large volumes of calls, similar to information providers ("IPs"). To the extent that these ISPs resemble chatline providers, Lightpath's investment strategy will therefore be impacted by changes in the current compensation scheme, even though it does not offer chatline services.[32/]

There are legitimate network costs associated with the termination of local phone calls. Recognizing this basic fact, the PSC instituted proceedings to determine the best way for local exchange carriers ("LECs") to compensate each other for the costs associated with terminating each other's calls.[33/] That proceeding included a collaborative phase involving over 30 industry participants, including Bell Atlantic and staff experts. After exhaustive proceedings, a thorough examination of the evidence, and careful consideration of the policy implications, the PSC established the current reciprocal compensation scheme and rates. Ultimately, the PSC based its rates mostly on studies submitted by BA-NY, which set out the costs involved in carrying and terminating calls.[34/] These cost studies reflected the actual cost for *all* calls traveling over a LEC's network, including calls to ISPs, residential, business and other users.

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31 ISPs make up less than one percent of Lightpath's total customer base.

32/ Although the Chatline Order deals primarily with issues uniquely related to chatline services, the wording of the Order leaves open the possibility that the PSC may consider compensation schemes for the termination of large call volumes to any single customer, regardless of whether that customer provides chatline services.

33/ See Case 94-C-0095, Order Instituting Proceeding (Issued and Effective February 10, 1994).

34/ The PSC also examined cost models submitted by AT&T and MCI. See Cases 95-C-0657, 94-C-0095 and 91-C-1144, Opinion and Order Setting Rates for First Group of Network Elements, at 12, 15 (issued and effective April 1, 1997) ("97-2 Order").

The existing reciprocal compensation scheme is therefore the product of a thorough investigation by the PSC, and should not be discarded lightly. Any party seeking to alter the current scheme, even on an interim basis, must present compelling evidence that either the overall approach, which was supported by BA-NY, or the underlying cost structure has significantly changed since the PSC issued its reciprocal compensation order.[35/] No such evidence exists: Nothing has occurred in the intervening months since the PSC issued its reciprocal compensation order to undermine the PSC's confidence in the current scheme or rates. Specifically, there is no evidence to support the exclusion of IP or ISP traffic from existing reciprocal compensation arrangements.

The most important issue for the PSC to consider, however, is the need for regulatory certainty if competition is to survive in New York. Companies formulate business plans and invest millions of dollars based on the regulatory landscape established by the PSC, and the PSC's policies have played a leading role in facilitating competition and entry in New York. When the PSC reverses its position, it changes the underlying market and reduces the value of the investments made based on its earlier pronouncements, thereby threatening continued investment. The PSC reached its decision on reciprocal compensation based on careful consideration of all the evidence and with ample opportunity for input from interested parties. If it changes position in mid-stream and makes ad hoc adjustments because one carrier complains particularly loudly, without developing an equally sound structure to replace it, it will severely hamper continued competition in the local market. Companies such as Lightpath simply cannot

[35/] Any such evidence, would of course, have to be subject to full evidentiary process, including an opportunity for Staff and interested parties to examine the evidence presented and submit comments and rebuttal evidence.

be expected to invest the millions of dollars necessary to compete with the ILECs if they run the risk of having the regulatory rug pulled out from under them.

Lightpath respectfully urges the PSC to:

- Confirm that any changes to reciprocal compensation rates will not take effect until the expiration of existing interconnection agreements[36/] and even then, only if a party has met the heavy evidentiary burden of showing that the current scheme needs to be revised; and
- Keep the current reciprocal compensation scheme and rates in place.

I. ANY CHANGES IN RECIPROCAL COMPENSATION ARRANGMENTS ARISING OUT OF THIS PROCEEDING SHOULD NOT AFFECT EXISTING INTERCONNECTION AGREEMENTS OR CURRENT RATES UNDER SUCH AGREEMENTS

As the PSC recognized in its Chatline Order, any rate changes arising out of this proceeding should not affect existing interconnection agreements.[37/] Most interconnection agreements, including Lightpath's, contain provisions governing change of law and dispute resolution.[38/] Any changes affecting these agreements should be made pursuant to these provisions. Lightpath therefore requests that the PSC re-iterate its position that existing agreements will be unaffected by the outcome of this proceeding. The PSC should also clarify that current rates under such agreements will remain in effect at a minimum until the expiration of such agreements, and beyond, unless there has been a demonstrated need to adjust the overall

[36/] Lightpath does not oppose all rate adjustments affecting reciprocal compensation. It does, however, categorically oppose adjustments, such as those contemplated here, that involve the disaggregation or disparate treatment of different types of traffic. Lightpath's position is based on sound policy and the PSC's own pronouncements. Chatline Order at 11 ("existing interconnection agreements will be unaffected.")

[37/] Chatline Order at 11 ("existing interconnection agreements will be unaffected.")

[38/] See, Case No. 97-C-0961 - Interconnection Agreement between Cablevision Lightpath and NYNEX at §§ 29.3, 30.11 (filed Aug. 14, 1997) ("Interconnection Agreement").

scheme. To do otherwise would strip CLECs of the regulatory certainty they need to continue investing in their networks and rolling out competitive telephone service.[39]

II. THE PSC ACTED CORRECTLY IN ADOPTING THE CURRENT RECIPROCAL COMPENSATION RATES AND APPLYING THEM TO *ALL* CALLS

It has been less than two years since the PSC first adopted the rate structure underlying reciprocal compensation,[40] and less a than year since it last relied on this established structure in revising reciprocal compensation rates.[41] In determining inter-carrier compensation, the PSC was guided by several key principles, the most critical of which were that: 1) LECs are entitled to compensation for the costs of the traffic they terminate and the services they provide, and 2) these compensation rates should be uniform, non-discriminatory and encourage efficiency.[42]

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[39] Any evidence or cost and rate design information submitted to demonstrate the need for an adjustment must be subject to a full evidentiary hearing where it can be evaluated, analyzed and critiqued by both Staff and the parties. See Chatline Order at 11 (if cost data is filed, Staff will analyze the data and recommend what procedures, if any, should be pursued, and whether further Commission action is necessary).

[40] See 97-2 Order at 1 (setting the rates for local and tandem switching, among other network elements). Reciprocal compensation rates are based on local switching costs, which include common trunk and local usage costs, and tandem switching costs, which include local switching plus common trunk (x 2) plus tandem usage plus transport usage. See, e.g. Letter from Sandra Dilorio Thorn, General Counsel, Bell Atlantic, to John C. Crary, Secretary, Public Service Commission (July 20, 1998) ("Rate Revision Letter").

[41] See Cases 95-C-0657, 94-C-0095 and 91-C-1174, Order Approving Tariff and Directing Revisions (Issued and Effective June 12, 1998) (directing BA-NY to revise certain tariffs on a temporary basis). BA-NY clearly acknowledged that the PSC's rate revisions were TELRIC-based, and did not dispute TELRIC's applicability. See Rate Revision Letter at 1 (stating that the "proposed TELRIC rates" being filed, and currently in effect, were filed in compliance with the PSC's June 12, 1998 Order). Thus, less than nine months ago BA-NY implicitly agreed that TELRIC remains the correct methodology for determining cost-based rates. Nothing has occurred in the intervening months to change this analysis.

[42] Level Playing Field Issues - Number Portability, Directory, and Intercarrier Compensation, A Staff Report in Module 2 Case 94-C-0095 - The Telecommunications Competition II

Acting on these principles, the PSC established reciprocal compensation rates that were symmetrical[43/] and compensated carriers based on their costs.[44/] The appropriate cost basis was determined by examining the incumbent LEC's (BA-NY's) costs[45/] using Total Element Long-Run Incremental Cost ("TELRIC") methodology.[46/] By relying on TELRIC, BA-NY and the PSC ensured that the cost studies accounted for *all* calls carried by a LEC, regardless of type,

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Proceeding, at 36-37 (February 15, 1995) ("Level Playing Field").

[43/] Level Playing Field at 59 (CLECs should be allowed to charge rates equivalent to those charged by the ILEC at their common meet point); Accord Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 16040-42 (released August 8, 1996) ("Local Competition Order") (directing states to establish "presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic").

[44/] Though cost-based, these reciprocal compensation rates are meant to allow for a "reasonable profit." See 47 U.S.C. § 252(d)(1)(B); 97-2 Order at 8.

[45/] See 97-2 Order; Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation, at Appendix A (Issued and Effective September 27, 1995) (requiring the largest ILEC in a given LATA to set rates for local termination, and establishing that CLECs need not file cost support for their rates as long as their rates are no higher than those of the ILEC) ("Intercarrier Compensation Order"); Accord Local Competition Order at 16040 (directing that the ILEC's forward-looking costs for transport and termination of traffic should be used as a proxy for the costs incurred by the interconnecting CLEC). The decision to rely on BA-NY's cost studies was consistent with the long established recognition that "cost information serves no useful purpose" for non-dominant carriers, which lack market power and are therefore "incapable of burdening customers with the costs of underutilizing facilities." See, e.g., US Sprint Communications Company Limited Partnership, Application for Authority to Operate Facilities in the Private Transatlantic Telecommunications Cable System for the Provision of Authorized Common Carrier Services to the United Kingdom, the Republic of Ireland and Bermuda and Points Beyond, Memorandum, Opinion, Order and Authorization, 4 FCC Rcd 6279, 6283-84 (released August 14, 1989); see also Local Competition Order at 16040 (concluding that it is reasonable to use the ILECs cost study as a "presumptive proxy" for other carriers' costs, because, inter alia, "larger LECs are generally in a better position to conduct a forward-looking cost study than smaller carriers.") See also section II.C.1. infra.

[46/] See 97-2 Order.

duration or customer.[47/] Due to its forward-looking nature, TELRIC also helped ensure that the rates adopted by the PSC took into account the possibility of technological improvements and likely changes in network usage, and the effect these changes would have on network costs.[48/]

47/ As Lightpath will discuss at length in its March 29th comments to the PSC, while the FCC recently concluded that ISP-bound traffic is "jurisdictionally mixed and appears to be largely interstate," it also made clear that parties continue to be bound by their existing interconnection agreements, as interpreted by state commissions. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, at 2, ¶ 1 (released February 26, 1999) ("Declaratory Ruling"). In addition, the FCC did not pre-empt state commissions' independent regulatory authority to subject ISP-bound calls to reciprocal compensation. See Id. at 15-18, ¶¶ 24-27 (state commissions are free to impose reciprocal compensation obligations on ISP-bound traffic, despite the FCC's conclusion that such traffic is largely interstate in nature). Thus, jurisdictionally, the PSC may continue to treat calls to ISPs as local calls for reciprocal compensation purposes. The PSC has already found that calls to an ISP are subject to reciprocal compensation, similar to any other intraLATA calls. See Case 97-C-1275, Order Closing Proceeding, at 2-3 (Issued and Effective March 19, 1998). Even the Chatline Order opening this proceeding makes clear that any adjustments under consideration will be based on New York's public policies, *not* on jurisdictional distinctions. The PSC's policies should continue to stand, as Lightpath will demonstrate in its March 29th response to BA-NY's petition to re-open the reciprocal compensation proceeding. See Notice Requesting Comments. Indeed, in light of the fact that the FCC already treats this traffic as local in the closely related access charge context, where it permits ISPs to purchase service from LECs under local tariffs and exempts such traffic from access charges this traffic should continue to be treated as local for purposes of reciprocal compensation. See Declaratory Ruling at 3, ¶ 4, 5, ¶ 7, 7, ¶ 9; see also id. at 14, ¶ 20. In the absence of access charges, reciprocal compensation is the only viable means for LECs to recover their costs associated with terminating calls to ISPs. The only other alternative -- imposing a surcharge on ISPs -- would be inconsistent with the principles of local rate regulation, and would undermine public policy by chilling Internet use.

48/ 97-2 Order; Cases 95-C-0657, 94-C-0095 and 91-C-1174, Opinion and Order Concerning Petitions for Rehearing of Opinion No. 97-2 (Issued and Effective September 22, 1997) (clarifying that TELRIC assumes that the use of the most efficient technology and TELRIC analysis is based on a "least-cost, most efficient" network.) ("97-2 Opinion"). TELRIC's forward-looking analysis also contemplates that parties are entitled to a return on capital, and estimates such a return in a manner designed to take account of future developments. Id. at 5.

A. TELRIC Costs Are Determined Based On Total Levels Of Output

The TELRIC methodology mandated by the Federal Communications Commission ("FCC") and adopted by the PSC[49/] requires that costs be determined based on the total level of output provided over the network element or service in question.[50/] As BA-NY accurately explained, "the increment that forms the basis for a TELRIC study shall be the entire quantity of the network element provided."[51/] More specifically, the FCC mandated that:

> The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, . . . divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.[52/]

Thus, by using TELRIC to determine the appropriate rates for the elements underlying reciprocal compensation rates, the PSC ensured that costs were based on the total level of output. By definition, then, the BA-NY cost studies underlying the reciprocal compensation rates were based on the average cost of *all* calls, including those, such as calls to an IP or ISP, that may deviate from the norm – a fact that BA-NY made clear in its testimony to the PSC, explaining that the usage component of its cost studies were based on *all* traffic served by its switches.[53/] In

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[49/] 97-2 Order at 15.

[50/] Even the name "TELRIC" refers to Total Element Long-Run Incremental Costs, emphasizing that it is inappropriate under the TELRIC methodology to consider anything less than total output.

[51/] 97-2 Order at 12 (emphasis added); See also Local Competition Order at 15850.

[52/] See Local Competition Order at Appendix B - Final Rules. (emphasis added).

[53/] See, e.g., Cases 95-C-0657, 94-C-0095 and 91-C-1174, Supplemental Testimony of C.R. Curbello, at 25-26 (October 9, 1996) (explaining that the usage components for switching related elements were derived by dividing total investments by "the total busy hour minutes of use fact, one of the advantages of TELRIC is that it prevents parties from using sample outputs that are not representative of the total and manipulating the data to their own advantage. Removing specific types of calls from the reciprocal compensation mix would therefore undermine the TELRIC methodology and require the PSC to calculate a new rate based solely on the traffic to be included under the new scheme. This time consuming process is totally unnecessary. There is no evidence to support a deviation from the status quo of continuing to apply uniform reciprocal compensation rates to *all* calls, as was originally intended.

Applying a separate reciprocal compensation rate for IP, or ISP traffic, would also establish a dangerous precedent and encourage carriers to abuse the regulatory process. ISP-bound traffic is treated the same as all other local traffic, and looks the same in the network. The only reason to exclude calls to ISPs from generally applicable reciprocal compensation arrangements is that some LECs are having difficulty competing for these customers. This presents a slippery slope.

If the PSC removes IP- or ISP- bound traffic from reciprocal compensation now, it will create a precedent for excluding future groups of customers that CLECs win away from BA-NY. Next, the PSC may be asked to consider adopting a separate scheme for other customers that attract large volumes of inbound traffic, such as call centers and radio stations featuring listener call-in shows. After that, CLECs might ask regulators to level the playing field by implementing a different (non cost-based) compensation scheme for classes of customers, such as wireless

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served by the switch" to arrive at a per-minute-of-use ("MOU") investment) (emphasis added); Id. at 30 (explaining that a similar procedure was used to determine tandem switching costs); Id. at 35 (explaining that usage was determined by "analyzing all recorded traffic" for a one month period) (emphasis added).

customers, that currently *benefit* incumbents by generating disproportionately large volumes of *outbound* traffic. Bell Atlantic would undoubtedly oppose any attempt to treat these profitable customers differently, given how hard it fought to have cost-based reciprocal compensation apply to cellular carriers in the first place.[54/] Such disputes over which regulatory schemes should apply to which customers would lead to endless regulatory gaming, undermine competition, and lead to the inefficient use of regulatory resources, because the PSC would be asked to separately regulate smaller and smaller market niches (i.e., business, residential, ISPs, large originators, large terminators, long calls, short calls, data calls, voice calls.)[55/] These are precisely the types of problems the current scheme was designed to avoid, by applying a single, uniform scheme to *all* traffic, regardless of type or customer.

B. The Reciprocal Compensation Rates Adopted by the PSC Do Not Need to Be Adjusted to Reflect Changes in Output or Traffic

As BA-NY, and other parties to the PSC's rate-setting proceedings recognized, the TELRIC studies presented to the PSC were forward-looking and based on long-run incremental costs.[56/] Thus, the TELRIC studies examined and approved by the PSC took into account cost trends and possible changes in future output, or traffic. As the PSC itself explained, under a TELRIC analysis, data "are evaluated and adjusted in accordance with anticipated future developments."[57/] Given the forward-looking nature of TELRIC, it is simply not credible to

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[54/] See, e.g., Local Competition Order at 16010.

[55/] See section II.D., infra. As the industry moves towards convergence these distinctions will become even more plentiful and less meaningful.

[56/] 97-2 Order at 12.

[57/] 97-2 Opinion at 6 (emphasis added).

argue that "new" developments regarding traffic patterns or holding times warrant a restructuring of the reciprocal compensation rates, particularly so soon after the PSC issued its rate decision. Nor can a credible argument be made that current traffic patterns are so deviant from those contemplated in the PSC's 97-2 Order that they require a new type of compensation arrangement. This is particularly true given that IPs and ISPs already existed in the mid-1990's when the current rules were developed, and those services were already thriving at that time.

C. The Current Reciprocal Compensation Scheme is Pro-Competitive

1. The Symmetrical Nature Of Reciprocal Compensation Rewards Efficient Competitors

The symmetrical mutual compensation scheme adopted by the PSC encourages efficiency in the local market.[58/] As the FCC explained in its Local Competition Order, "a symmetric compensation rate gives [a CLEC] correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs."[59/] Thus, the symmetrical scheme currently in place was intended to ensure that CLECs were not penalized for their efficiency. This was accomplished by allowing CLECs to capture any difference between their termination costs and those of the ILEC.

[58/] See Intercarrier Compensation Order at Appendix A (requiring that termination rates for reciprocal compensation must be symmetrical).

[59/] Local Competition Order at 16040-41. There are several other policy reasons militating in favor of symmetrical rates. For instance, symmetrical rates are administratively easier for a commission to derive and manage than asymmetrical rates based on each carrier's costs. Id. at 1088. In addition, symmetrical rates encourage competitive entry by allowing potential CLECs to enter the local market without submitting cost studies. Requiring CLECs to provide cost studies before they can offer service would create a formidable barrier to entry, given the expense such a cost study would likely entail. See id. at 16041-42.

An asymmetrical compensation scheme based on the costs of the individual carriers involved would likely lead to anti-competitive results. For example, if BA-NY were allowed to pay compensation based on the costs of the terminating CLEC, while the CLEC had to pay Bell Atlantic based on BA-NY's costs, the result would be to reward the most inefficient carriers. If a CLEC managed to lower its termination costs through efficiencies in its network, it would have to pass those savings on to BA-NY, in the form of lower reciprocal compensation rates. At the same time, the CLEC would still have to pay BA-NY a higher rate based on the ILEC's less efficient network. This would have the perverse effect of punishing the CLEC for its relative efficiency while rewarding BA-NY for its inefficiency. The current symmetrical arrangements eliminate this distortion by allowing carriers to benefit from their own efficiencies.[60/]

In creating a symmetrical scheme applying to all traffic, the PSC must have recognized the possibility that reciprocal compensation might result in some customer types being served above actual costs, and others being served below such costs – that is the necessary result of any scheme based on the *average* costs of all traffic. Moreover, the same is true of end user rates, where business customers are more profitable than residential customers. This is the natural result of any scheme based on average costs. It is not the result of poor regulation. In fact, as noted above, such a system benefits competition by creating incentives for carriers to maximize their efficiency.

60/ Symmetrical rates also have the added benefit of reducing an ILEC's ability to use its bargaining strength in negotiations with CLECs. For example, if rates were not symmetrical, BA-NY would be able to force CLECs to pay it excessively high termination rates, while accepting exceedingly low termination payments from BA-NY, an arrangement that would obviously stifle competition. See Local Competition Order at 16041.

The PSC should not punish efficient or innovative CLECs who are able to identify and exploit market opportunities. Rather, such carriers should be rewarded for bringing true competition to the market. If some CLECs are able to serve ISPs more cheaply than other LECs can, then ISPs will turn to those CLECs for service. Faced with competition in the ISP market, a LEC can either 1) concede the market to its competitors; 2) offer better, or more efficient service than its competitors; 3) beat its competitors price; or 4) seek regulatory relief. The first three options are market driven and promote competition while the last option retards competition by dragging the PSC into the marketplace.

2. Imbalances In Amounts Of Traffic Terminated By Different Carriers Is A Function Of Competition In The Market

Any imbalances in the overall ratio of traffic terminated between carriers are a natural result of a competitive market not regulatory loopholes, and should therefore be addressed in the marketplace not in a regulatory proceeding. All LECs have the opportunity to compete for and attract customers with specific call patterns. To the extent that an imbalance exists, it is more likely to be an indication of differences in service quality and efficiency than a sign of regulatory mismanagement. If some carriers are more successful at targeting or attracting profitable customers than others, they should be allowed to benefit from their success. That is the nature of a competitive market. An imbalance in reciprocal compensation payments should therefore create an incentive for the carrier that experiences the negative balance to intensify and improve its marketing efforts with respect to certain types of customers. Imbalances in reciprocal compensation payments therefore reinforce the workings of the competitive marketplace and should be welcomed by the Commission as a sign that competition is beginning to work to the advantage of ratepayers in the State of New York.

D. Allowing Exceptions for Particular Kinds Of Traffic, or a Particular Class of Customers Will Undermine Competition and Lead to the Inefficient Use of Regulatory Resources

Ironically, ILECs, such as BA-NY, originally favored reciprocal compensation over a "bill and keep" regime as the best means of recovering their costs for terminating local calls.[61/] Now that reciprocal compensation has boosted competition and cut into their monopolies, ILECs such as BA-NY are seeking to revise the reciprocal compensation arrangements they originally endorsed. The PSC should not allow this sort of manipulation of the regulatory process. A carrier that advocates a particular rule when they think such a rule will work to their advantage, should not be allowed to run to the PSC and argue in favor of a new position when experience shows that the rule favors more nimble competitors – especially where that carrier is *not* advocating giving up the advantages it enjoys with respect to other customer types, such as wireless carriers. This type of regulatory indulgence would undoubtedly encourage ongoing requests of carriers whenever the market turned against them. This would lead to an inefficient use of regulatory resources as carriers continue to rely on the PSC, rather than the market, to address competitive imbalances.[62]

61/ Similarly, the ILECs, including Bell Atlantic, originally characterized ISP-bound traffic that originated and terminated within the same exchange service area as local and still charge their own customers local rates for calls to ISPs. For example, in obtaining FCC approval to provide "Internet Access Services," Bell Atlantic asserted that calls to ISPs over the public switched network are fundamentally local in nature. See In the Matter of Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, CCB Pol. 96-09, Bell Atlantic Reply Comments at 4-5 (filed Apr. 29, 1996); see also Amendment to Bell Atlantic CEI Plan to Expand Service Following Merger with NYNEX, CCB Pol. 96-09 at 4 (filed May 5, 1997) ("Bell Atlantic CEI Plan") ("[I]n providing this [Internet Access Service] Bell Atlantic and its vendor will subscribe only to generally-available local telecommunications services.").

62 Carriers should, of course, remain free to negotiate mutually beneficial arrangements, if they choose to do so.

CONCLUSION

For all of the reasons stated above, the PSC should find that the existing reciprocal compensation scheme and rates continue to apply to all traffic with local traffic characteristics, including traffic terminating with large volume users such as ISPs and IPs. The PSC should also confirm that any changes to reciprocal compensation rates will not take effect until the expiration of existing interconnection agreements and that even then any party seeking to revise the current scheme carries a heavy burden of proof. Any contrary decision is likely to severely undermine competition in the local market and entangle the PSC in an unending series of regulatory proceedings.

Respectfully submitted,

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